



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG-2015-0457]

RIN 1625-AA08

Special Local Regulation; L'HERMIONE Parade, Upper New York Bay and Lower Hudson River, New York, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary interim rule with request for comments.

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SUMMARY: The Coast Guard is establishing a Special Local Regulation on the navigable waters of the Upper New York Bay and Lower Hudson River, NY for the tall ship L'HERMIONE boat parade. This Special Local Regulation allows the Coast Guard to enforce restrictions on all vessel traffic through the Special Local Regulation during the L'HERMIONE boat parade, both planned and unforeseen, that could pose an imminent hazard to persons and vessels operating in the area. This rule is necessary to provide for the safety of life on the navigable waters during the parade of ships. The Coast Guard is issuing this temporary rule due to the exigent circumstances and invites comments to

modify or amend the rule, as necessary.

DATES: This rule is effective and will be enforced from 6 a.m. to 3 p.m. on July 4, 2015.

Comments and related material may be received by the Coast Guard throughout the effective period.

Requests for public meetings must be received by the Coast Guard on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]

ADDRESSES: Documents mentioned in this preamble are part of Docket Number USCG-2015-0457. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on "Open Docket Folder" on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You may submit comments, identified by docket number, using any one of the following methods:

- (1) Federal eRulemaking Portal:  
<http://www.regulations.gov>.
- (2) Fax: 202-493-2251.
- (3) Mail or Delivery: Docket Management Facility (M-30),

U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590-0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202-366-9329.

See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section below for further instructions on submitting comments. To avoid duplication, please use only one of these three methods. FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, contact Lieutenant Douglas Neumann, Waterways Management Division at Coast Guard Sector New York, telephone 718-354-4154 or e-mail [DOUGLAS.W.NEUMANN@USCG.MIL](mailto:DOUGLAS.W.NEUMANN@USCG.MIL). If you have questions on viewing or submitting material to the docket, call Ms. Cheryl Collins, Program Manager, Docket Operations, telephone 202-366-9826.

#### SUPPLEMENTARY INFORMATION:

##### Table of Acronyms

COTP	Captain of the Port
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking

#### A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments

received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided.

#### 1. Submitting comments

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at <http://www.regulations.gov>, or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on "Submit a Comment" on the line associated with this proposed rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11

inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

## 2. Viewing comments and documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number (USCG-2015-0457) in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

## 3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the Federal Register (73 FR 3316).

#### 4. Public meeting

We currently do not plan to hold a public meeting. You may, however, submit a request for one, using one of the methods specified under ADDRESSES. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid in this rulemaking, we will hold one at a time and place announced by a later notice in the Federal Register.

#### B. Regulatory History and Information

The Coast Guard is issuing this temporary interim rule without prior notice through an NPRM pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM with respect to this rule because the event sponsors were late in submitting the marine event application. The Coast Guard will, however, consider comments in issuing a subsequent temporary interim rule or temporary final rule.

This late submission did not give the Coast Guard enough time to publish an NPRM, take public comments, and issue a final rule before the parade, since the final submission was received

on May 13, 2015. It would be impracticable and contrary to the public interest to delay promulgating this rule, as it is necessary to protect the safety of waterway users. At any time, the Coast Guard may publish an amended rule if necessary to address public concerns.

For the same reasons mentioned above, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register.

#### C. Basis and Purpose

Under the Ports and Waterways Safety Act, 33 U.S.C. 1231, 1233; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6 and 160.5; Department of Homeland Security Delegation No. 0170.1, the Coast Guard has the authority to establish Special Local Regulations in defined water areas that are determined to have hazardous conditions and in which vessel traffic can be regulated in the interest of safety.

This rule is prompted by the navigation safety situation created by highly concentrated boat parade through a highly-trafficked harbor.

The purpose of this rulemaking is to provide for safety on the navigable waters in the regulated area during the parade.

#### D. Discussion of the Interim Rule

The Coast Guard is establishing a Special Local Regulation on the navigable waters of the Upper New York Bay and Lower Hudson River. This Special Local Regulation allows the Coast Guard to enforce restrictions on all vessel traffic through the parade route during the L'HERMIONE Parade, both planned and unforeseen, that could pose an imminent hazard to persons and vessels operating in the area. All vessels participating in the parade must proceed at five knots and display a flag that is blue in color. Parade vessels are required to be power driven. Sailing vessels may hoist sails, but are required to be power driven. All vessels must have the ability to communicate on VHF Frequency channel 8. Parade vessels must keep a distance of 50 yards from the L'HERMIONE at all times, unless authorized by the COTP or a designated representative. All vessels not participating in the parade but viewing the parade must keep a distance of 250 yards from the parade participants and not interfere with marine traffic. Human-powered vessels, such as kayaks and canoes, will not be considered participants in the parade, nor will they be allowed to enter the formation of the parade.

#### E. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.



## 1. Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

The Coast Guard determined that this rulemaking will not be a significant regulatory action for the following reasons: vessel traffic will only be restricted for limited durations and the Special Local Regulation covers only a small portion of the navigable waterway. Advanced public notifications will also be made to local mariners through appropriate means, which could include, but would not be limited to, Local Notice to Mariners and Broadcast Notice to Mariners.

## 2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the

following entities, some of which may be small entities: the owners or operators of vessels intending to enter or transit within the parade route during a vessel restriction period.

The Special Local Regulation would not have a significant economic impact on a substantial number of small entities for the following reasons: the Special Local Regulation would be of limited size and any waterway closure of short duration. Additionally before the effective period of a waterway closure, advanced public notifications will be made to local mariners through appropriate means, which could include, but would not be limited to, Local Notice to Mariners and Broadcast Notice to Mariners.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

### 3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its

provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### 4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520.).

#### 5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and determined

that this rule does not have implications for federalism.

#### 6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "For Further Information Contact" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### 7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### 8. Taking of Private Property

This rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### 9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### 10. Protection of Children from Environmental Health Risks

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

#### 11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

## 12. Energy Effects

This rule is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

## 13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

## 14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves restricting vessel movement within an area. This rule is categorically excluded from further review under paragraph

34(h) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 100

Safety of life in the regatta or marine parade area.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

2. Add §100.35T01-0457 to read as follows:

§100.35T01-0457 Special Local Regulation; L'HERMIONE Parade, Upper New York Bay and Lower Hudson River, New York, NY

(a) Location. The following area is a Special Local Regulation: All navigable waters, from the Verrazano Bridge North to the East side of the Statue of Liberty and north to Pier 92 on the Hudson River.

(b) Regulations. (1) The provisions of the general regulations for regulated navigation areas contained in 33 CFR

165.11 and 165.13 apply to the parade route specified in this Special Local Regulation.

(2) In accordance with the general regulations, entry into or movement within this zone, during periods of enforcement, is prohibited unless authorized by the COTP Sector New York or a designated representative.

(3) Persons and vessels may request permission to enter the parade route by contacting the COTP or one of the COTP's on-scene representatives on VHF-16 or via phone at 718-354-4353.

(4) During periods of enforcement, all vessels participating in the parade must proceed at five knots or at such speed dictated by the event organizers. Vessels participating in the parade must display a flag that is blue in color and are required to be power driven. Sailing vessels may hoist sails, but are required to be power driven and must maneuver as power driven vessels. All vessels must have the ability to communicate on VHF Frequency channel 8. Vessels must keep a distance of 50 yards from the L'HERMIONE at all times unless authorized by the COTP or a designated representative. All vessels not participating in the parade but viewing the parade must keep a distance of 250 yards from the parade participants and not interfere with marine traffic. Human power vessels, such as kayaks and canoes will not be considered



participants in the parade, nor will they be allowed to enter the formation of the parade.

(5) Vessels must comply with all directions given to them by the COTP or one of the COTP's on-scene representatives. The "on-scene representative" of the COTP is any Coast Guard commissioned, warrant or petty officer who has been designated by the COTP to act on the COTP's behalf. An on-scene representative may be on a Coast Guard vessel, private vessel, or may be on shore and communicating with vessels via VHF-FM radio or loudhailer. Members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

(6) Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light or other means, the operator of the vessel must proceed as directed.

(7) All other relevant regulations, including but not limited to the Rules of the Road (33 CFR §84 - Subchapter E, Inland Navigational Rules) remain in effect within the regulated area and must be strictly followed at all times.

(c) Enforcement period. This regulation is enforceable from 6 a.m. on July 4, 2015 until 3 p.m. on July 4, 2015.

(1) Prior to commencing or suspending enforcement of this regulation, the COTP will give notice by appropriate means to inform the affected segments of the public, to include dates and times. Such means of notification will include

constructive notice by publication in the Federal Register, actual notice, as well as Broadcast Notice to Mariners and Local Notice to Mariners.

(2) Violations of this Special Local Regulation may be reported to the COTP at 718-354-4353 or on VHF-Channel 16.

Dated: June 8, 2015

G. Loeb1,  
Captain, U.S. Coast Guard  
Captain of the Port New York  
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7/6/2015]